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Attorneys for Defendant
SHELTERPOINT EQUITIES, LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD SKAFF,

Plaintiff,

v.

SHELTERPOINT EQUITIES, LTD.,
ROBATA GRILL AND SUSHI
LIMITED PARTNERSHIP; and
DOES 1-25, Inclusive,

Defendants.

Case No. C08-01384 EMC

Civil Rights

ANSWER TO COMPLAINT

DEMAND FOR JURY TRIAL

Defendant SHELTERPOINT EQUITIES, LTD., a California Limited Partnership, for itself alone, now answers the Complaint herein of Plaintiff RICHARD SKAFF ("Plaintiff"), and alleges as follows:

FIRST CAUSE OF ACTION

1. Defendant Shelterpoint Equities, Ltd. ("Defendant Shelterpoint") lacks sufficient information and belief to respond to any of the allegations in paragraph 1 of the Complaint, and on that basis, denies generally and specifically each and every allegation contained therein.

2. In response to the allegations of paragraph 2 of the Complaint, Defendant Shelterpoint admits that Plaintiff asserts purported claims based on alleged denial of accessibility to the common areas of the business property located at 591 Redwood

1 Highway, Mill Valley, California ("Shelterpoint Business Center") and to Robata Grill
2 and Sushi (the "Restaurant"), and denies each and every allegation by Plaintiff in his
3 Complaint upon which he bases his assertion of entitlements, all as set forth in this
4 Answer. Defendant Shelterpoint lacks sufficient information and belief to respond to
5 the allegations of denial of equal protection of law and civil rights as alleged in said
6 paragraph 2, and as respects the Restaurant, and on that basis, Defendant
7 Shelterpoint denies each and every such allegation, and every other allegation of said
8 paragraph.

9 3. In response to paragraph 3 of the Complaint, Defendant Shelterpoint
10 admits that this Court has jurisdiction at this time to hear this matter.

11 4. Defendant Shelterpoint admits the allegations of paragraph 4 of the
12 Complaint.

13 5. Defendant Shelterpoint admits the allegations of paragraph 5 of the
14 Complaint.

15 6. In response to paragraph 6 of the Complaint, Defendant Shelterpoint
16 admits that portions of the Shelterpoint Business Center and the Restaurant are a
17 "public accommodation or facility"; Defendant Shelterpoint denies generally and
18 specifically each and every remaining allegation of said paragraph 6.

19 7. In response to paragraph 7 of the Complaint, Defendant Shelterpoint lacks
20 sufficient information or belief to respond to the allegations contained therein, and on
21 that basis denies generally and specifically each and every allegation contained in said
22 paragraph 7.

23 8. In response to paragraph 8 of the Complaint, Defendant Shelterpoint lacks
24 sufficient information or belief to respond to the allegations contained therein, and on
25 that basis denies generally and specifically each and every allegation contained in said
26 paragraph 8.

27 9. In response to paragraph 9 of the Complaint, Defendant Shelterpoint
28 admits that the acts complained of would have occurred, if they had occurred at all, in

1 the City of Mill Valley, County of Marin, State of California. Defendant Shelterpoint
2 lacks sufficient information and belief to respond to the remaining allegations of
3 paragraph 9, and on that basis, denies generally and specifically each and every
4 allegation contained therein.

5 10. In response to paragraph 10 of the Complaint, Defendant Shelterpoint
6 asserts that the law and the legislative history and intent thereof speak for themselves,
7 and otherwise denies each and every allegation contained therein.

8 11. In response to paragraph 11 of the Complaint, Defendant Shelterpoint
9 admits that the gangway ramp has no wheel guides, has handrails that cannot be
10 gripped, and has a four inch plus or minus vertical edge at the floating deck level.
11 Defendant Shelterpoint denies generally and specifically each and every remaining
12 allegation of paragraph 11.

13 12. In response to paragraph 12 of the Complaint, Defendant Shelterpoint
14 lacks sufficient information or belief to respond, and on that basis, denies generally and
15 specifically each and every allegation in said paragraph 12.

16 13. In response to the allegations of paragraph 13, Defendant Shelterpoint
17 admits that Shelterpoint Business Center is in substantially the same condition as fall
18 2006; except as expressly admitted, Defendant Shelterpoint denies generally and
19 specifically each and every remaining allegation of paragraph 13.

20 14. In response to the allegations of paragraph 14 of the Complaint, Defendant
21 Shelterpoint lacks sufficient information and belief to respond to any of the allegations
22 therein, and on that basis denies generally and specifically each and every allegation
23 contained therein.

24 15. In response to paragraph 15, Defendant Shelterpoint denies generally and
25 specifically each and every allegation contained in paragraph 15 of the Complaint.

26 16. In response to paragraph 16, Defendant Shelterpoint denies generally and
27 specifically each and every allegation contained in paragraph 16 of the Complaint.

28 17. In response to the allegations of paragraph 17 of the Complaint, Defendant

1 Shelterpoint lacks sufficient information or belief to respond, and on that basis denies
2 generally and specifically each and every allegation contained therein.

3 18. In response to the allegations of paragraph 18 of the Complaint, Defendant
4 Shelterpoint denies generally and specifically each and every allegation contained in
5 said paragraph, and further denies that Plaintiff is entitled to any damages whatsoever,
6 including actual, general, special, or treble damages.

7 19. In response to the allegations of paragraph 19 of the Complaint, Defendant
8 Shelterpoint admits that Plaintiff seeks recovery of attorney's fees and costs; except as
9 expressly admitted herein, Defendant Shelterpoint denies generally and specifically
10 each and every remaining allegation in paragraph 19.

11 20. In response to the allegations of paragraph 20 of the Complaint, Defendant
12 Shelterpoint admits that Plaintiff seeks injunctive relief and damages as set forth in said
13 paragraph; except as expressly admitted herein, Defendant Shelterpoint denies
14 generally and specifically each and every remaining allegation in said paragraph 20.

15 **SECOND CAUSE OF ACTION**

16 21. Defendant Shelterpoint incorporates, and reasserts, as if fully set forth at
17 length herein, its responses to the allegations of paragraphs 1 through 20 of the
18 Complaint, and incorporates them herein as if separately set forth.

19 22. In response to paragraph 22 of the Complaint, Defendant Shelterpoint
20 asserts that the law and the legislative history and intent thereof speak for themselves,
21 and otherwise denies each and every allegation contained therein.

22 23. In response to paragraph 23 of the Complaint, Defendant Shelterpoint
23 asserts that the law and the legislative history and intent thereof speak for themselves,
24 and otherwise denies each and every allegation contained therein.

25 24. In response to paragraph 24 of the Complaint, Defendant Shelterpoint
26 asserts that the law and the legislative history and intent thereof speak for themselves,
27 and otherwise denies each and every allegation contained therein.

28 25. In response to paragraph 25 of the Complaint, Defendant Shelterpoint

1 asserts that the law and the legislative history and intent thereof speak for themselves,
2 and otherwise denies each and every allegation contained therein.

3 26. In response to paragraph 26 of the Complaint, Defendant Shelterpoint
4 asserts that the law and the legislative history and intent thereof speak for themselves,
5 and otherwise denies each and every allegation contained therein.

6 27. In response to the allegations of paragraph 27, Defendant Shelterpoint
7 denies generally and specifically each and every allegation contained therein.

8 28. In response to the allegations of paragraph 28, Defendant Shelterpoint
9 denies generally and specifically each and every allegation contained therein.

10 29. In response to the allegations of paragraph 29, Defendant Shelterpoint
11 denies generally and specifically each and every allegation contained therein.

12 30. In response to the allegations of paragraph 30 of the Complaint, Defendant
13 Shelterpoint admits that Plaintiff seeks the relief recited by him as sought in the
14 allegations in said paragraph; except as expressly admitted herein, Defendant
15 Shelterpoint denies generally and specifically each and every allegation set forth in said
16 paragraph 30.

17 **AFFIRMATIVE DEFENSES**

18 AS A FIRST SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
19 AND EACH CAUSE OF ACTION THEREIN, this answering defendant alleges that the
20 Complaint fails to state facts sufficient to constitute a cause of action against this
21 answering defendant.

22 AS A SECOND SEPARATE AND AFFIRMATIVE DEFENSE TO THE
23 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
24 alleges that the injuries, loss and damages of which Plaintiff complains, if there were
25 any, were proximately caused by the acts or omissions of parties other than this
26 answering defendant.

27 AS A THIRD SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
28 AND EACH CAUSE OF ACTION THEREIN, this answering defendant alleges that any

1 recovery for the injuries and damages alleged in the Complaint is barred, in whole or in
2 part, by reason of Plaintiff's own negligence or intentional conduct and, therefore,
3 Plaintiff's recovery, if any, should be reduced in proportion to the perception of his
4 comparative negligence, fault or bad faith.

5 AS A FOURTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
6 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
7 avers that if it is found liable, that its degree of responsibility and liability for the
8 damages arising from the injuries and damages allegedly sustained by the Plaintiff be
9 determined, and that it be held liable only for that portion of the total damages in
10 proportion to its liability for same.

11 AS A FIFTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
12 AND EACH CAUSE OF ACTION THEREIN, this answering defendant, at all times
13 pertinent herein, acted in good faith, without ulterior reasons, and with honest intent
14 toward Plaintiff.

15 AS A SIXTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
16 AND EACH CAUSE OF ACTION THEREIN, this answering defendant, at all times
17 relevant herein, complied with all applicable provisions of federal law, state law and
18 local ordinances, including but not limited to the Americans With Disability Act of 1990,
19 California Civil Code, California Government Code, California Health and Safe Code
20 and California implementing regulations.

21 AS AN SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
22 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
23 alleges that Plaintiff has waived, or is estopped, from alleging the matters set forth in
24 the Complaint.

25 AS A EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
26 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
27 alleges that Plaintiff failed to mitigate his damages.

28 AS A NINTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT

1 AND EACH CAUSE OF ACTION THEREIN, this answering defendant alleges that
2 Plaintiff's Complaint is barred by the doctrine of laches.

3 AS A TENTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
4 AND EACH CAUSE OF ACTION THEREIN, this answering defendant alleges that
5 Plaintiff's Complaint is barred by the doctrine of unclean hands.

6 AS A ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
7 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
8 alleges that Plaintiff should be denied recovery under the Complaint, and each cause of
9 action thereof, because Plaintiff's conduct was manifestly unreasonable.

10 AS A TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
11 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
12 alleges that Plaintiff's Complaint, and each cause of action thereof, is barred by the
13 applicable statute of limitations.

14 AS A THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
15 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
16 alleges that the modifications to the premises, or any of them, alleged in the Complaint
17 would not be readily achievable, are not technically feasible, would pose an undue
18 burden on this answering defendant, or are not required due to exemption(s).

19 AS A FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
20 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
21 alleges that any act or omission alleged in the Complaint, or any inability of Plaintiff to
22 access the premises, is not discriminatory, but is instead due to the structure of the
23 building, appurtenant public thoroughfares, or forces of nature, which cannot be
24 corrected without substantial construction, alteration or structural modification.

25 AS A FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
26 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
27 alleges that Plaintiff has no standing to sue for any damages as alleged in his
28 Complaint.

1 AS A SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
2 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
3 alleges that to the extent that Plaintiff alleges that this answer defendant owed Plaintiff
4 any duty to comply with the law, including, without limitation, disability access
5 provisions of the ADA, California Civil Code, California Government Code, California
6 Health and Safety Code, California implementing regulations or any other such statute,
7 as alleged in the Complaint or otherwise, any such obligation to comply with the law is
8 impossible and/or impractical.

9 AS AN SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
10 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
11 alleges that Plaintiff failed to provide notice of the alleged violations.

12 AS A EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
13 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
14 alleges that to the extent Defendant Shelterpoint engaged in any of the acts alleged in
15 the Complaint, such acts or omissions were privileged or justified.

16 AS A NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
17 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
18 alleges that Plaintiff's alleged damages, if any, are speculative, uncertain, and not
19 capable of determination by a finder of fact.

20 AS A TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
21 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
22 alleges that Plaintiff was not a catalyst for any changed behavior on the part of this
23 answering defendant.

24 AS A TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE TO THE
25 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
26 alleges that Plaintiff's action has not resulted, and will not result, in the enforcement of
27 an important right affecting the public interest.

28 AS A TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE TO THE

1 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
2 alleges that Plaintiff failed to engage in a reasonable attempt to settle his dispute with
3 Defendant Shelterpoint prior to litigation.

4 AS A TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE TO THE
5 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
6 alleges that it did not act with malice, oppression, or fraud toward Plaintiff, and
7 therefore, Plaintiff is not entitled to an award of punitive damages or exemplary
8 damages against Defendant Shelterpoint.

9 AS A TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE TO THE
10 COMPLAINT AND EACH CAUSE OF ACTION THEREIN, this answering defendant
11 alleges that the imposition of punitive damages would constitute a denial to Defendant
12 Shelterpoint of due process of law and of equal protection of the laws in violation of the
13 Fifth and Fourteenth Amendments to the United States Constitution, and of Article I,
14 Section 7 of the California Constitution.

15 [continued on next page – nothing omitted]
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2 **WHEREFORE**, Defendant Shelterpoint Equities, Ltd. prays for relief as
3 hereinafter stated:

4 1. That Plaintiff be denied any relief by virtue of his Complaint and each
5 cause of action therein;

6 2. That this Court dismiss the proceedings on the basis that it lacks
7 jurisdiction over the state claims;

8 3. That this Court award Defendant reasonable attorney's fees, litigation
9 expenses, and costs of this proceeding; and,

10 4. That this Court grant such other and further relief as the Court shall deem
11 just and proper.

12 Dated: May 8, 2008

FLAXMAN & BLAKELY

13
14 By:  _____

15 PETER FLAXMAN
16 Attorney for Defendant
17 Shelterpoint Equities, Ltd.
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DEMAND FOR JURY TRIAL

Defendant Shelterpoint hereby demands a jury trial.

Dated: May 8, 2008

FLAXMAN & BLAKELY

By: 

PETER FLAXMAN
Attorney for Defendant
Shelterpoint Equities, Ltd.

PROOF OF SERVICE BY MAIL
[C.C.P. § 1013a(1)]

I, Penelope A. Dufficy, certify and declare as follows:

I am over the age of eighteen years, and not a party to this action. My business address is 591 Redwood Highway, Suite 2275, Mill Valley, California, which is in the county where the mailing described below took place.

On May 8, 2008, I deposited in the mail at my place of business at 591 Redwood Highway, Suite 2275, Mill Valley, California, a copy of the following document(s): **Answer to Complaint; Demand for Jury Trial; and Declination to Proceed Before a Magistrate Judge and Request for Reassignment to a United States District Judge** in a sealed envelope, with postage thereon fully prepaid, addressed to:

Sidney J. Cohen, Esq.
Sidney J. Cohen Professional Corporation
427 Grand Avenue
Oakland, CA 94610

Carl Lippenberger, Esq.
Lippenberger, Thompson, Welch
Soroko & Gilbert LLP
201 Tamal Vista Blvd.
Corte Madera, CA 94925

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 8, 2008, at Mill Valley, California.


Penelope A. Dufficy

SHELTER11ANSWER 05 06 08